



S/N 09/785,791

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	GOLDSTEIN et al.	Examiner:	Shawn S. An
Serial No.:	09/785,791	Group Art Unit:	2613
Filed:	February 16, 2001	Docket No.:	12808.0012US11
Title:	OPTICAL DEVICE		

CERTIFICATE UNDER 37 CFR 1.10:

"Express Mail" mailing label number: EV 588958597 US

Date of Deposit: July 14, 2006

I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

By: \_\_\_\_\_

Name: John Junkers

**PETITION TO REVIVE**  
**UNINTENTIONALLY ABANDONED APPLICATION**

Mail Stop PETITION  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**23552**  
PATENT TRADEMARK

Dear Sir:

The above-identified application became abandoned for failure to file a timely and proper reply to an Office Action by the United States Patent and Trademark Office. Applicants hereby petition for revival of this unintentionally abandoned application and have enclosed a response believed to put the application in condition for allowance as required under 37 C.F.R. § 1.137(b). Please charge the necessary petition fee of \$750.00 for a small entity as set forth in § 1.17(m) to Deposit Account No. 13-2725.

The United States Patent and Trademark Office erroneously sent a Notice of Abandonment on March 24, 2004. However, a Notice of Appeal had been mailed on October 22, 2003, which was timely. The original Notice of Abandonment was sent when the application was still pending and the application had not gone abandoned.

07/18/2006 JBALINAN 00000057 132725 09785791

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Applicants responded to the erroneous Notice of Abandonment and a Petition to Withdraw the Notice of Abandonment was filed on November 8, 2004 and believed that the Petition maintained pendency.

A Decision on the Petition was issued on August 29, 2005. In the Decision, the Petition to Withdraw the Notice of Abandonment was denied. The Decision stated that although the original Notice of Abandonment was sent in error, the Request for Withdrawal of the Notice of Abandonment was not a sufficient and timely response and that the response period continued. Moreover, the Notice of Appeal was not sufficient to maintain pendency. The application had gone abandoned on April 22, 2004. A Notice of Abandonment reflecting this date was never sent.

Applicants first became aware that the application had actually gone abandoned when a Decision on Petition mailed August 29, 2005 was later received. Applicants had believed that the previous Notice of Abandonment was erroneous and were not informed of the abandonment until the Decision on Petition sent August 29, 2005 had been received.

As a Notice of Abandonment reflecting the correct date of abandonment was never sent, and Applicants had filed a Request to Withdraw the premature Notice of Abandonment, Applicants were not informed of the actual abandonment until the Decision mailed on August 29, 2005 was received.

Applicants assert that delay was originally caused by an erroneously issued Notice of Abandonment and confusion over the proper response date in light of a pending Petition to Withdraw and lack of clarification provided until a subsequent Decision on the Petition was received.

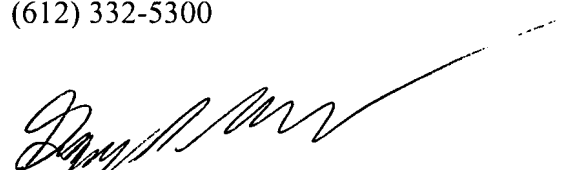
The entire delay in filing the required reply from the due date for replying until the filing of a grantable petition under 37 C.F.R. § 1.137(b) was unintentional.

Granting of the Petition and revival of the above-identified patent application is hereby requested. A speedy and favorable Decision on this Petition is hereby solicited. If the Examiner feels that a telephone interview may be helpful in this matter, please contact Applicants' Representative at (612) 332-5300.

Respectfully submitted,

MERCHANT & GOULD P.C.  
P.O. Box 2903  
Minneapolis, MN 55402-0903  
(612) 332-5300

Dated: July 14, 2006

  
\_\_\_\_\_  
Gregory A. Sebold  
Reg. No. 33,280



UNITED STATES PATENT AND TRADEMARK OFFICE

108.12USI1



COMMISSIONER FOR PATENTS  
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AUG 29 2005

Paper No. 16

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DECISION ON PETITION

*Req for Reconsideration Oct 29, 2005 D.*

*GAS*  
MERCHANT & GOULD PC  
P.O. BOX 2903  
MINNEAPOLIS MN 55402-0903

In re Application of  
Michael D. Goldstein, et al.  
Application No. 09/785,791  
Filed: February 16, 2001  
For: **OPTICAL DEVICE**

This is a decision on the Petition to Withdraw Holding of Abandonment filed November 8, 2004, pursuant to 37 C.F.R. § 1.181(a). No fee is required.

The application was held abandoned for failure to respond in a timely manner and effective manner to the final Office action mailed July 30, 2003. A Notice of Abandonment was mailed March 24, 2004.

Petitioner alleges to have timely filed a response to said final Office action, specifically that a Notice of Appeal was timely filed on October 22, 2003. As evidence thereof, petitioner includes a copy of a date-stamped post card receipt which itemized a transmittal sheet containing a certificate of mailing, Notice of Appeal, check in the amount of \$165.00 and the post-card itself, which is date-stamped as received in the Office on October 27, 2003.

A review of the file record reveals that the original copy of the transmittal letter (with certificate of mailing) and Notice of Appeal had been received and matched with the file. However, the file record does not reveal appellants' brief, any petition for extensions of time for filing said brief or the fee for appellant's brief.

MPEP §1206 Appeal Brief, states in part:...

**TIME FOR FILING APPEAL BRIEF...**

Although failure to file the brief within the permissible time will result in dismissal of the appeal, if any claims stand allowed, the application does not become abandoned by the dismissal, but is returned to the examiner for action on the allowed claims. See MPEP § 1215.04. If there are no allowed claims, the application is abandoned as of the date the brief was due. Claims which have been objected to as dependent from a rejected claim do not stand allowed. In a reexamination proceeding failure to file the brief will result in the issuance of the certificate under 37 CFR 1.570. [emphasis added]

Appellants have demonstrated, and the file record supports, the timely filing of a Notice of Appeal on October 22, 2003, with certificate of mailing. However, the mere filing of a Notice of Appeal by appellant, does not toll the time for submission of appellant's brief. Therefore, appellants maximum time period for filing their brief, including the two (2) months automatically extended to appellant from the date that the Notice of Appeal was received and appropriate petition for up to five (5) months extension of time, would have expired May 24, 2004 (May 22, 2004 was a Saturday and thus the time period would have been extended to the next business day, Monday, May 24, 2004).

PROLAW

The Office was premature in mailing the Notice of Abandonment on March 24, 2004. However, the file record does not reveal any evidence that appellant filed a petition for extension of time, appeal brief fee or an actual brief.

In accordance with MPEP §1206, failure by appellant to file a brief, results in the dismissal of the appeal. The file record reveals that all claims were rejected in the final Office action mailed July 30, 2003. Therefore, given that there were (1) no allowed claims upon the dismissal of the appeal, (2) no evidence of a petition for extension of time, (3) no record of the brief fee having been paid or (4) no evidence that appellants filed a brief, then the application is appropriately held abandoned. The date of abandonment was December 22, 2003.

Accordingly, the petition is **Denied**.

37 C.F.R § 1.181 Petition to the Director, states in part:...

(f) The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable. [emphasis added]

MPEP §711.03(c) Petitions Relating to Abandonment, states in part:...

C. Treatment of Untimely Petition To Withdraw Holding of Abandonment 37 CFR 1.181(f) provides that, inter alia, except as otherwise provided, any petition not filed within 2 months from the action complained of may be dismissed as untimely. Therefore, any petition (under 37 CFR 1.181) to withdraw the holding of abandonment not filed within 2 months of the mail date of a notice of abandonment (the action complained of) may be dismissed as untimely. 37 CFR 1.181(f). [emphasis added]

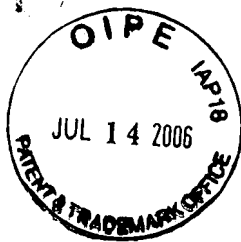
The Notice of Abandonment in the subject application was mailed on March 24, 2004. The subject petition was not filed until November 8, 2004, over seven (7) months from the date of the action complained of. In accordance with 37 C.F.R. §1.181(f), applicants' petition is also untimely.

Applicants may wish to file a petition under 37 C.F.R. §1.137 to revive the application.

The application file is being returned to the file repository.



Dwayne Bost  
Special Program Examiner  
Technology Center 2600  
Communications



# COPY

Receipt is hereby acknowledged for the following in the U.S. Patent and Trademark Office:

In re Application of: GOLDSTEIN ET AL.  
For: OPTICAL DEVICE  
Docket No.: 12808.12US11  
Filed: FEBRUARY 16, 2001

Serial No.: 09/785,791  
Due Date: JANUARY 30, 2005

Express Mail No.: EV408489242US  
Date Mailed: November 8, 2004

- ☒ Transmittal Sheet in duplicate containing Certificate of Mailing
- ☒ Small entity status has been previously established
- ☒ Check(s) in the amount of \$130.00 for Petition Fee for withdrawing Notice of Abandonment
- ☒ Other: Petition to Withdraw Notice of Abandonment, copy of Notice of Appeal, transmittal sheets, check for \$130 and return postcard showing date received October 27, 2003
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GSebald:PLSkaw



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**MERCHANT & GOULD**

A Professional Corporation  
An Intellectual Property Law Firm  
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Director of the United States Patent and Trademark Office

Merchant & Gould P.C.

*Alan W. Kwachuk*

Two Signature Required For Amounts Exceeding \$5,000

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



Applicant: GOLDSTEIN ET AL. Examiner: S. AN  
Serial No.: 09/785,791 Group Art Unit: 2613  
Filed: FEBRUARY 16, 2001 Docket: 12808.12USI1  
Confirmation No.: 5543  
Due Date: JANUARY 30, 2005  
Title: OPTICAL DEVICE

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**CERTIFICATE UNDER 37 CFR 1.10:**

"Express Mail" mailing label number: EV408489342US  
Date of Deposit: November 8, 2004

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I hereby certify that this paper or fee is being deposited with the U.S. Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

By:   
Name: David Ortiz

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**23552**  
PATENT TRADEMARK OFFICE

Sir:

**EV408489342US**

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- ☒ Other: Petition to Withdraw Notice of Abandonment, copy of Notice of Appeal, transmittal sheets, check for \$130 and return postcard showing date received October 27, 2003
- ☒ Return postcard

Please consider this a PETITION FOR EXTENSION OF TIME for a sufficient number of months to enter these papers or any future reply, if appropriate. Please charge any additional fees or credit overpayment to Deposit Account No. 13-2725. A duplicate of this sheet is enclosed.

MERCHANT & GOULD P.C.  
P.O. Box 2903, Minneapolis, MN 55402-0903  
612.332.5300

By:   
Name: Gregory A. Sebald  
Reg. No.: 33,280  
GSebald:PLSkaw

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



Applicant: GOLDSTEIN ET AL. Examiner: S. AN  
Serial No.: 09/785,791 Group Art Unit: 2613  
Filed: FEBRUARY 16, 2001 Docket: 12808.12USI1  
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By: 

Name: David Ortiz

Mail Stop Petition  
Commissioner for Patents  
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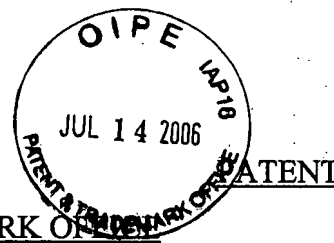
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P.O. Box 2903, Minneapolis, MN 55402-0903  
612.332.5300

By:   
Name: Gregory A. Sebald  
Reg. No.: 33,280  
GSebald:PLSkaw

S/N 09/785,791



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	GOLDSTEIN ET AL.	Examiner:	S. AN
Serial No.:	09/785,791	Group Art Unit:	2613
Filed:	FEBRUARY 16, 2001	Docket No.:	12808.12US11
Title:	OPTICAL DEVICE		

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Date of Deposit: November 8, 2004

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By: 

Name: David Ortiz

**PETITION TO WITHDRAW NOTICE OF ABANDONMENT**

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**23552**

PATENT TRADEMARK OFFICE

Dear Sir:

1. Applicants hereby petition to withdraw the Notice of Abandonment dated March 24, 2004 for failing to respond to an Office Action dated July 30, 2003. A Notice of Appeal had been timely filed.

2. Applicants received a Notice of Abandonment dated March 24, 2004. The Notice of Abandonment stated that the Application had gone abandoned for failure to file a reply to the Office Action of July 30, 2003.

4. Applicants assert that a Notice of Appeal was timely filed on October 22, 2003 via first class mail.

5. Applicants enclose a copy of the Notice of Appeal along with the transmittal sheets, a copy of the check for the Notice of Appeal, as well as the return postcard. Applicants note that the transmittal sheet includes a Certificate of Mailing with a date of October 22, 2003.

6. Applicants assert that the Application should not have gone abandoned and that the Notice of Abandonment was issued erroneously and through no fault of Applicants and/or Applicants' Representative. Applicants assert that the Notice of Abandonment should not have been issued as a response was timely filed.

7. Any delay in filing this Petition has been unintentional.

8. A check in the amount of \$130 for the Petition as required under 35 U.S.C. § 1.17(h) is enclosed.

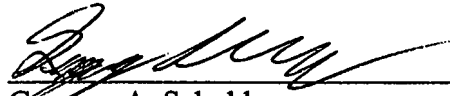
A speedy and favorable Decision on the Petition is hereby solicited. If a telephone conference would be helpful in this matter, please contact Applicants' Representative at (612) 336-4728.

Respectfully submitted,

MERCHANT & GOULD P.C.  
P.O. Box 2903  
Minneapolis, Minnesota 55402-0903  
(612) 332-5300

Date: \_\_\_\_\_

11/8/04

  
\_\_\_\_\_  
Gregory A. Sebald  
Reg. No. 33,280  
GAS:PLSkaw



**COPY**

Receipt is hereby acknowledged for the following in the U.S. Patent and Trademark Office:

In re Application of: GOLDSTEIN ET AL.

For: OPTICAL DEVICE

Docket No.: 12808.12US11

Filed: FEBRUARY 16, 2001

Serial No.: 09/785,791

Due Date: OCTOBER 30, 2003

Date Mailed: October 22, 2003

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Patent



GSebald:PLSKlg

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Merchant & Gould P.C.

Director of the United States Patent and Trademark Office

*Alan W. Kowalchuk*

Two Signatures Required For Amounts Exceeding \$5,000

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Serial No.: 09/785,791  
Filed: FEBRUARY 16, 2001  
Confirmation No.: 5543  
Due Date: OCTOBER 30, 2003  
Title: OPTICAL DEVICE

Examiner: S. AN  
Group Art Unit: 2613  
Docket: 12808.12US11



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By: 

Name: KATE CANNON

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**23552**

PATENT TRADEMARK OFFICE

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MERCHANT & GOULD P.C.  
P.O. Box 2903, Minneapolis, MN 55402-0903  
612.332.5300

By: 

Name: Gregory A. Sebald

Reg. No.: 33,280

GSebald:PLSklg

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Applicant: GOLDSTEIN ET AL.  
Serial No.: 09/785,791  
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Group Art Unit: 2613  
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By: 

Name: KATE GANNON

Mail Stop AF  
Commissioner for Patents  
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MERCHANT & GOULD P.C.  
P.O. Box 2903, Minneapolis, MN 55402-0903  
612.332.5300

By: 

Name: Gregory A. Sebald

Reg. No.: 33,280

GSebald:PLSk1g



S/N 09/785,791



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: GOLDSTEIN ET AL. Examiner: S. AN  
Serial No.: 09/785,791 Group Art Unit: 2613  
Filed: FEBRUARY 16, 2001 Docket No.: 12808.12USII  
Title: OPTICAL DEVICE

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By: 

Name: KATE GANNON

**NOTICE OF APPEAL FROM THE EXAMINER  
TO THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In accordance with 37 C.F.R. § 1.191, Applicants hereby appeal to the Board of Patent Appeals and Interferences from the final rejection of claims 1-40 of the above-identified application, as set forth in the Office Action mailed July 30, 2003.

Our check in the amount of \$165.00 is enclosed to cover the required fee for filing this Notice of Appeal as set forth under 37 C.F.R. § 1.17(b).

Please charge any additional fees or credit any overpayment to Merchant & Gould P.C., Deposit Account No. 13-2725.

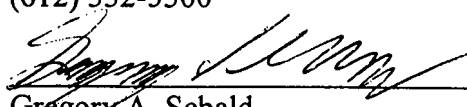
Respectfully submitted,

MERCHANT & GOULD P.C.  
P.O. Box 2903  
Minneapolis, Minnesota 55402-0903  
(612) 332-5300

Date: 10/22/03

**23552**

PATENT TRADEMARK OFFICE

  
Gregory A. Sebald  
Reg. No. 33,280  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/785,791	02/16/2001	Michael D. Goldstein	12808.12US11 ✓	5543

23552 7590 03/24/2004

MERCHANT & GOULD PC  
P.O. BOX 2903  
MINNEAPOLIS, MN 55402-0903

GAS

EXAMINER

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DATE MAILED: 03/24/2004

14

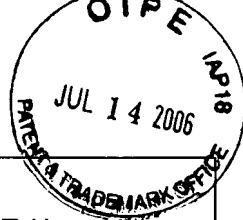
REV LEMO: July 30, 2004

FIN REV: Jan 30, 2005 ✓

**COPY**

Please find below and/or attached an Office communication concerning this application or proceeding.

**PROLAW**



# **Notice of Abandonment**

Application No.

09/785,791

Examiner

Shawn S An

Applicant(s)

GOLDSTEIN ET AL.

Art Unit

2613

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 30 July 2003.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.  
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☐ A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

CHANDLER  
PATENT ATTORNEY

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/785,791	02/16/2001	Michael D. Goldstein	12808.12USII ✓	5543

23552 7590 07/30/2003

MERCHANT & GOULD PC  
P.O. BOX 2903  
MINNEAPOLIS, MN 55402-0903

FR 2MO: Sept 30, 2003

FR 3MO/PTA: Oct 30, 2003

FR 6MO: Jan 30, 2004 DV



EXAMINER	
AN, SHAWN S	
ART UNIT	PAPER NUMBER

2613

DATE MAILED: 07/30/2003

13

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Please find below and/or attached an Office communication concerning this application or proceeding.

PROLAW

# Office Action Summary

Application No.

09/785,791

Applicant(s)

Michael Goldstein et al.

Examiner

Shawn An

Art Unit

2613

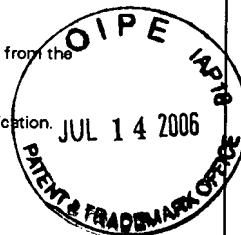


-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).



## Status

- 1) ☒ Responsive to communication(s) filed on Feb 10, 2003
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

<b>Notice of References Cited</b>	Application/Control No. <b>09/785,791</b>	Applicant(s)/Patent Under Reexam <b>Michael Goldstein et al.</b>	
	Examiner <b>Shawn An</b>	Art Unit <b>2613</b>	Page 1 of 1

### U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY <sup>1</sup>	Name	Classification <sup>2</sup>	
	A	5,522,789	6/1996	Takahashi	600	166
	B	5,796,427	8/1998	Suzuki	348	208
x	C	5,812,187	9/1998	Watanabe	348	70
x	D	5,076,687	12/1991	Adelson	356	4
	E					
	F					
	G					
	H					
	I					
	J					
	K					
	L					
	M					

### FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY <sup>1</sup>	Country	Name	Classification <sup>2</sup>	
	N						
	O						
	P						
	Q						
	R						
	S						
	T						

### NON-PATENT DOCUMENTS

*		Include, as applicable: Author, Title, Date, Publisher, Edition or Volume, Pertinent Pages
	U	
	V	
	W	
	X	

\* A copy of this reference is not being furnished with this Office action. See MPEP § 707.05(a).

<sup>1</sup> Dates in MM-YYYY format are publication dates.

<sup>2</sup> Classifications may be U.S. or foreign.



## DETAILED ACTION

### *Response to Amendment*

1. As per Applicant's instructions in Paper 12 as filed on 2/10/03, claims 1, 4, 16, 27, and 30 have been amended.

### *Response to Remarks*

2. Applicant's arguments with respect to claims 1-40 have been considered but are moot in view of the new ground(s) of rejection.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3, 9-10, 12-15, 17-20, 23-32, and 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takahashi (5,522,789) in view of Suzuki (5,796,427).

**Regarding claims 1, 9, and 30,** Takahashi discloses a stereoscopic device and method for producing a sequence of stereoscopic images of an object, comprising:

a sensor assembly (Fig. 13(a), 31) having an optical axis for detecting a sequence of stereoscopic images of an object (Fig. 13C);

a movement value detecting means (15B) for detecting a magnitude of adjusting the zoom optical system; and

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a processing unit (58) connected to the sensor assembly and to the movement value detecting means;

wherein the processing unit outputs stereoscopic images, according to a signal received from the movement value detecting means, thereby producing a visually stable sequence of display images (col. 31, lines 43-52).

Takahashi fails to disclose a movement detector for detecting the sensor assembly perpendicular to the optical axis, relative to the object, the processing unit being connected to the movement detector, and the processing unit selecting portions of the stereoscopic images according to a signal received from the movement detector.

However, Suzuki teaches a *prior art* comprising a movement detector (Fig. 3, 5) for detecting the sensor assembly perpendicular to the optical axis (note: a direction of movement comprises moving up, down, left, and/or right, which means the above directions are perpendicular to the original optical axis. Furthermore, the Applicants define the perpendicular to the optical axis as direction of up, down, left, and/or right as shown in Figs. 25E-25F), relative to the object (col. 5, lines 37-42), and a processing unit (Fig. 3, 6) connected to the sensor assembly (col. 1, lines 25-30) and to the movement detector, wherein the processing unit selects portions (a less amount of information than usual) of the images (Fig. 4; col. 6, lines 3-30) according to a signal received from the movement detector.

Therefore, it would have been obvious to a person of ordinary skill in the relevant art employing the stereoscopic device and method for producing a sequence of stereoscopic images as taught by Takahashi to incorporate the sensor assembly, the movement detector, and the processing unit as taught by Suzuki's prior art so that the movement detector detects the sensor assembly perpendicular to the optical axis and the processing unit connects to the sensor assembly and to the movement detector, wherein the processing unit selects portions of the images according to the signal received from the movement detector. Furthermore, by combination of Takahashi's processing unit and the Suzuki processing unit, it would have been considered



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obvious to produce a processing unit that connects to the sensor assembly and to the movement detector, wherein the processing unit selects portions of the stereoscopic images according to the signal received from the movement detector, in order to compensate for the shake/vibration of the sensor assembly, thereby producing a visually stable sequence of display images.

**Regarding claim 3**, Suzuki teaches the processing unit (6) being connected to the movement detector (5) and a memory unit (3) connected to the processing unit.

**Regarding claim 10**, the Examiner takes official notice that displaying partially stereoscopic images is well known in the art.

**Regarding claims 12-13**, the Examiner takes official notice that a conventional color sensor arrays such as RGB and CYMG sensor arrays are well known in the art for detecting different wavelengths.

**Regarding claims 14 and 32**, Suzuki teaches the average of the movement to be constant, such as 0 so that any other number excluding 0 should be considered fluctuating (col. 6, lines 3-33).

**Regarding claims 15 and 37**, Takahashi discloses at least two light valves being operative to open at a different predetermined timing, wherein the multiwavelength (RGB) light sensor array (Fig. 13(a), 31) detects images corresponding to a predetermined combination of an open state of a selected one of the light valves and a selected one of at least two alternating beams of light (col. 11, lines 39-67; col. 12, lines 1-5).

**Regarding claim 17**, Takahashi discloses capture means (Fig. 13(a), 60) connected to the multiwavelength (RGB) light sensor array for capturing data from the multiwavelength (RGB) light sensor array.

**Regarding claim 18**, Takahashi discloses an image processor (Fig. 13(c), 60), and a storage unit (Fig. 14, 65) for capturing data.

Since the above cited references disclose storage unit, movement detector, light valves, and the multiwavelength light sensor array, it would have been considered obvious to utilize a

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controller being connected to the storage unit, the movement detector, the light valves, and the multiwavelength light sensor array, and timing the operation of the light valves, the multi wavelength light sensor array, and the controllable multi wavelength illumination unit for a purpose of controlling the above devices for optimal image processing.

**Regarding claims 19 and 20**, Takahashi discloses the CCD preferably being a high-definition device having a large imaging surface, but nevertheless, fails to disclose the CCD including two group of sensors or a plurality of sensors. However, the Examiner takes official notice that color CCD array comprising two groups of sensors or a plurality of sensors are well known in the art. Therefore, one of skill in the art would recognize that color CCD array could easily have been utilized, so that the CCD array includes at least two group of sensors for detecting light in different and/or predetermined range of wavelengths such as blue or red or green.

**Regarding claim 23**, The combination of Takahashi and Suzuki does not specifically disclose different ranges of wavelength associated with the sensors being selected from colors such as RGBCYMG, Infra red, Ultra violet, and/or visible light. However, the Examiner takes official notice that color CCD sensor array is well known in the art.

Therefore, it would have been obvious to select different colors as listed above, for better lighting/illumination of an object to be analyzed.

**Regarding claims 24-25**, the Examiner takes official notice that RGB and CYMG color sensor arrays are well known in the art.

**Regarding claim 26**, Suzuki discloses a plurality of sub-matrices (Fig. 4, A1), wherein each one of the sub-matrices is selected from a respective ones of the images.

**Regarding claims 27 and 39**, Suzuki teaches the sub-matrices being located and measured a distance equal to a respective one of the movements from an origin to a direction opposite to the respective movement relative to the origin (col. 6, lines 3-31).

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**Regarding claim 28,** The combination of Takahashi and Suzuki does not specifically disclose selecting colors such as RGBCYMG. However, the Examiner takes official notice that color CCD sensor array is well known in the art.

Therefore, it would have been obvious to select the color of sub-matrices from colors as listed above, for better lighting/illumination of an object to be analyzed.

**Regarding claim 29,** Takahashi discloses a stereoscopic video generator (Fig. 13(a), 59) connected to the processor, and a stereoscopic display unit (Fig. 13(c)) connected to the video generator for producing the stable sequence of images.

**Regarding claim 31,** Takahashi discloses light receiving means (Fig. 13(c); col. 13, lines 19-21). Therefore, it would have been obvious to illuminate a detected area of an object for better lighting.

**Regarding claim 38,** the Examiner takes official notice that a light source comprising a rotating color (RGB) filter for producing at least two alternating beams of light, wherein the beams of light are characterized as being in a different range of wavelengths, is well known in the art for detecting different wavelengths for better lighting/illumination.

5. Claims 2, 4-5, and 33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takahashi and Suzuki as applied to claims 1 and 30 above, respectively, and further in view of Adelson (5,076,687).

**Regarding claims 2 and 33,** the combination of Takahashi and Suzuki does not particularly disclose a lenticular lens array and a light sensor array.

However, Adelson teaches a conventional optical apparatus including a lenticular lens layer (Fig. 7, 32) and a light sensor array (33), wherein the lenticular lens layer is located in front of the sensor array (Fig. 7).

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Therefore, it would have been obvious to a person of ordinary skill in the relevant art employing a stereoscopic device/method as taught by Takahashi to incorporate the lenticular lens layer and the light sensor array as taught by Adelson as an alternative efficient way for detecting stereoscopic images.

**Regarding claim 4**, Suzuki discloses a plurality of sub-matrices (Fig. 4, A1), wherein each one of the sub-matrices is selected from a respective ones of the images.

**Regarding claim 5**, Suzuki teaches the sub-matrices being located at a distance equal to a respective one of the movements from an origin, in a direction opposite to the respective movement relative to the origin (col. 6, lines 3-31).

**Regarding claim 34**, Adelson teaches capturing the light from a normally illuminated scene (col. 1, lines 12-17). Further, the Examiner takes official notice that a light source comprising a rotating color (RGB) filter for sequentially illuminating the detected area with alternating beams of light are well known in the art for detecting different wavelengths.

**Regarding claim 35**, Suzuki teaches measuring a distance of movements from an origin to a direction opposite to the respective movement relative to the origin (col. 6, lines 3-31).

6. Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Takahashi, Suzuki, and Adelson as applied to claim 35 above, and further in view of Watanabe (5,812,187).

**Regarding claim 36**, Suzuki teaches sub-matrices (Fig. 4, A1).

The combination of Takahashi, Suzuki, and Adelson does not specifically disclose illuminating ranges of wavelength.

However, it is well known for a light source to be utilized for illuminating an object/device, such as an endoscope.

Furthermore, Watanabe teaches a light source (Fig. 1, 5) for illuminating ranges of wavelengths (7).

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Therefore, it would have been obvious to a person of ordinary skill in the relevant art employing a stereoscopic method as taught by Takahashi to incorporate the Suzuki's sub-matrices and the Watanabe's's illuminating unit so as to associate each one of the sub-matrices, at the different predetermined timing, with the different range of wavelengths for a sole purpose of better illuminating the object in stereoscopic mode.

7. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Takahashi and Suzuki as applied to claim 39 above, respectively, and further in view of Watanabe (5,812,187).

**Regarding claim 40**, Suzuki teaches sub-matrices (Fig. 4, A1).

The combination of Takahashi and Suzuki does not specifically disclose illuminating ranges of wavelength.

However, it is well known for a light source to be utilized for illuminating an object/device, such as an endoscope.

Furthermore, Watanabe teaches a light source (Fig. 1, 5) for illuminating ranges of wavelengths (7).

Therefore, it would have been obvious to a person of ordinary skill in the relevant art employing a stereoscopic method as taught by Takahashi to incorporate the Suzuki's sub-matrices and the Watanabe's's illuminating unit so as to associate each one of the sub-matrices, at the different predetermined timing, with the different range of wavelengths for a sole purpose of better illuminating the object in stereoscopic mode.

8. Claims 6-8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takahashi and Suzuki as applied to claim 1 above, and further in view of Watanabe (5,812,187).

**Regarding claim 6**, Suzuki discloses an interface (Fig. 3, 2) being connected to the sensor assembly and to the processor;

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Takahashi discloses a stereoscopic video generator (Fig. 13(a), 59) connected to the processor, and a stereoscopic display unit (Fig. 13(c)) connected to the video generator for producing the stable sequence of images.

The combination of Takahashi and Suzuki does not specifically disclose a light source being connected to the interface.

However, it is well known for a light source to be utilized for illuminating an object/device, such as an endoscope for better lighting.

Furthermore, Watanabe teaches a light source (Fig. 1, 5) for illuminating an object. Therefore, it would have been obvious to a person of ordinary skill in the relevant art employing a stereoscopic device as taught by Takahashi to incorporate the Watanabe's's light source unit so that the light source is connected to the Suzuki's interface for a sole purpose of illuminating the object/device for better lighting.

**Regarding claim 7**, Watanabe teaches producing light in a predetermined range of wavelengths, such as red, green, and blue (Fig. 1, 7).

**Regarding claim 8**, Watanabe's teaches an endoscope (Fig. 1) including a conventional light source unit (5) producing at least two alternating beam of light (7) as being in a different range of wavelengths.

**Regarding claim 11**, Watanabe's discloses a wavelengths consisting of visible red, green blue colors (7). Furthermore, the Examiner takes official notice that conventional colors such as cyan, yellow, magenta, infra-red, ultra-violet, and visible light are well known in the art. Therefore, it would have been obvious to select colors from above to be used for specific application.

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9. Claims 16 and 21-22 rejected under 35 U.S.C. 103(a) as being unpatentable over Takahashi and Suzuki as applied to claim 15 above, and further in view of Watanabe's (5,812,187).

**Regarding claims 16 and 21,** The combination of Takahashi and Suzuki does not specifically disclose a controllable multi wavelength illuminating unit producing at least two alternating beam of light as being in a different range of wavelengths.

However, Watanabe's teaches an endoscope (Fig. 1) including a conventional controllable multi wavelength illuminating unit (Fig. 5) producing at least two alternating beam of light (7) as being in a different range of wavelengths.

Therefore, it would have been obvious to a person of ordinary skill in the relevant art employing a stereoscopic device as taught by Takahashi to incorporate the Watanabe's's controllable multi wavelength illuminating unit as a light source being connected to the processing unit to produce at least two alternating beam of light (R, G, B) having a different range of wavelengths for generating a more accurate color video signal, thus improving an image quality.

**Regarding claim 22,** Watanabe's discloses a wavelengths consisting of visible red, green blue colors light (7). Furthermore, the Examiner takes official notice that conventional colors such as cyan, yellow, magenta, infra-red, ultra-violet, and visible light are well known in the art. Therefore, it would have been obvious to select colors from above for better lighting/illumination of an object to be analyzed in a specific application.

### ***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shawn An whose telephone number (703) 305-0099 and schedule are Tuesday-Friday (Monday off).

SHAWN G. AN  
PATENT EXAMINER



SSA

July 27, 2003